

DISCIPLINARY ACTION

Consensual Private Admonition - Board Case No. 25, 2003. Date of Sanction:

February 17, 2004. A panel of the Preliminary Review Committee of the Board on Professional Responsibility (“PRC”) offered a private admonition to a lawyer as a result of its finding that there was probable cause to conclude that the lawyer had violated Rules 1.15(d), 5.3, and 8.4(d) of the Delaware Lawyers’ Rules of Professional Conduct (“Rules”). The lawyer accepted the private admonition and admitted violations of Rules 1.15(d), 5.3, and 8.4(d) by failing to maintain a balanced client subsidiary ledger, failing to accurately report same on the lawyer’s Certificate of Compliance filed with the Supreme Court, and failing to supervise an employee/bookkeeper, in this area, which led to the embezzlement of client and firm funds.

In 1999, the lawyer employed a nephew to maintain the firm’s books and records. Over the course of a six month period, from August 2001 through his termination in February 2002 (due to unexcused absences), the nephew engaged in a scheme to falsify the books and records to afford him the opportunity to misappropriate firm and client funds. The nephew stopped maintaining a balanced client subsidiary ledger for the client escrow account sometime in 2001. In reviewing the December 2002 bank statement for the client escrow account, the lawyer found a series of unauthorized ATM transactions on the client escrow account. [A credit card had been issued for this account in order to allow the lawyer to electronically file bankruptcy pleadings in accordance with court rules. The nephew had been directed to destroy the card following its activation.] The lawyer promptly contacted the bank and the ODC; reimbursed the client escrow account for all funds; and filed criminal charges against the nephew. According to an audit report by the Lawyers’ Fund for Client Protection (“LFCP”), the nephew had misappropriated approximately \$37,500.00 from the firm—\$21,000.00 of client funds and \$16,500.00 of firm funds.

The lawyer violated Rule 1.15(d) by failing to maintain a balanced client subsidiary ledger from 2001 into 2002. The lawyer violated Rule 5.3 by failing to adequately supervise the nephew, which resulted in the failure to maintain the client subsidiary ledger and the

embezzlement of firm and client funds. The lawyer violated Rule 8.4(d) for inaccurately reporting the status of the client subsidiary ledger on the lawyer's 2002 Certificate of Compliance filed with the Annual Registration Statement to the Supreme Court.

The PRC considered the lawyer's cooperative attitude and full and free disclosure to the disciplinary authorities, in particular, the self-report to ODC; the absence of a dishonest or selfish motive; the timely good faith effort to rectify the consequences of the misconduct; and the lawyer's remorse for the misconduct, as factors in mitigation of a harsher sanction. In aggravation, the PRC considered the lawyer's prior [1995] private admonition, involving a conflict of interest issue and failure to maintain an escrow account and substantial experience in the practice of law.

The lawyer was required to reimburse the ODC and the LFCP for the costs of its investigation in the disciplinary matter.